DOCKET NO. HHD-CV-19-6120210-S	:	SUPERIOR COURT
CONNECTICUT STATE POLICE, ET AL.	:	JUDICIAL DISTRICT OF HARTFORD
V.	:	AT HARTFORD
JAMES ROVELLA, ET AL	:	AUGUST 7, 2020

MEMORANDUM OF TRIAL DECISION

This matter involves a claim of violations of the State Personnel Act[1] (act) by the Department of Emergency Services and Public Protection (DESPPP), its commissioner, James Rovella, the Department of Administrative Services (DAS) and Josh Geballe, its commissioner. The action was brought by the plaintiff, Connecticut State Police Union, Inc. (CSPU), and individual troopers with the Connecticut State Police (CSP) (collectively plaintiffs). The present complaint alleges violations of the act in the course of the conduct of promotional examinations to fill twenty-seven sergeant positions for the CSP in the fall of 2019. The plaintiffs' seek declaratory and injunctive relief voiding the results of the promotional process. Following the denial of a motion to dismiss the parties agreed that an ex-parte injunction would continue in effect until the date of a hearing on the permanent relief requested and a decision thereon.

This case was tried to the court over two days in February of 2020. The court received testimony from Col. Stavros Mellekas, commanding officer of the Connecticut State Police; John Castiline, President of the Connecticut State Police Union; Erin Choquette, Senior Legal Advisor to the Commissioner of Administrative Services (DAS); Matthew Cronin, Human Resources Consultant III; Nicholas Hermes, Deputy Commissioner of the DAS; Daphne Lewis, Equal Employment Opportunity Specialist for the DESPP; Trooper Frist Class Timothy Van Deventer, and Joel Wiesen, industrial psychologist with a specialty in psychometrics, also known as

[1] General Statutes § 5-193 et seq.

employment testing. Additionally, the court received numerous exhibits. After careful consideration and weighing of the testimony as well as the exhibits admitted as full, the court makes the following findings of fact.

On September 24, 2019, the DESPP issued an advisory that solicited applications for the position of State Police Sergeant. The examination protocol was to consist of a written multiple-choice examination, two rounds of referral questions, the provision of a professional profile (essentially a resume) and an oral interview. The notice advised that candidates who were screened and found to be minimally qualified would be permitted to take the written examination. Those who passed the written examination would be required to answer, serially, the two "referral questions" (RQ1 & RQ2) with a successful completion of the first referral question constituting a prerequisite for taking the second. This protocol was similar to that historically utilized by the DESPP for state police promotions. A significant difference in the methodology envisioned when the advisory of September 24 was issued was that while prior written examinations resulted in a list of candidates who were ranked in accordance with their score, the 2019 written examination would have resulted only in a pool of people who passed the examination. That is, those candidates whose scores were higher than the cut off score would be admitted into a smaller pool of candidates who were simply deemed to have passed the written examination.

In anticipation of the 2019 promotional examinations for the sergeant positions, DAS retained Cooperative Personnel Services HR Consulting (CPS) to perform job analysis and validation for the sergeants' position as well as test development. A significant reason for retaining CPS was to develop an a test subject to being conducted online via the Jobaps webpage of the State of Connecticut which provides an online platform for job posting, processing of

applications and conducting examinations. In order to accomplish the job analysis and validation CPS distributed job surveys to over 150 CSP sergeants with an 89 percent completion rate. CPS used the data it obtained from the job surveys to draft an eighty-two question multiple-choice test and two sets of referral questions.

By notice dated October 2, 2019, the DESPP published an update of the September 24, 2019 advisory. The update identified a new examination protocol pursuant to which the candidates would submit answers to a document that comprised a combined application and examination (application package). Candidates who passed the application/examination process were placed on a list that the DAS considered to be the official "candidate list." The promotional process thereafter was directed by the CSP. These candidates on the "candidate list" were then invited to answer two rounds of referral questions. While actual scores were assigned for the responses to the referral questions, the testing resulted only in a pass/fail grouping of the applicants. Only those candidates that passed RQ1 testing were invited to take the RQ2 test. The candidates who successfully passed the RQ2 test were invited to submit a Professional Profile and to submit to an oral interview. Thereafter, twenty-seven candidates were selected for promotion to sergeant.

It is helpful to describe the methodology previously employed by the CSP. Prior examinations, such as that held in 2014, consisted of a lengthy written examination, an oral interview and the submission of a professional profile. The written examination covered the A & O (Administrative and Operations) manual, criminal law, the collective bargaining agreement and other areas. All components of the examination were scored separately. The scores were added together to reach a candidate's final score. A minimum passing score was assigned. All candidates who achieved that passing score were thereafter ranked in order of their scores. This

final ranking was the candidate list from which promotions were made in order of highest scoring candidates first with subsequent promotions made in descending order.

The plaintiffs claim that the entire examination process was in violation of the act because the application/examination package did not produce a "candidate list" which identified the most qualified candidates for promotion and the subsequent examinations were not in conformance with the statutory requirements because they were not "competitive," as that term has been defined by the Connecticut Supreme Court.

The defendants argue that the promotional process was in conformance with the act because the process leading to the list of candidates who had passed the application/examination process complied with all provisions of the act. The resulting "candidate list" represented, in the view of the DAS, an acquittal of its obligation under the act. The further selection activity of the CSP was not implicated by the statutory mandated process, in its view, because once the official "candidate list" was created, the agency was statutorily possessed of almost unfettered discretion to select any candidate from the list. Moreover, the defendants assert that the plaintiffs are not entitled to injunctive relief because they have an adequate remedy at law, can show no irreparable harm and a balancing of the equities favors the defendants.

The court first examines the legal framework within which the present issues must be decided. "A party seeking [permanent] injunctive relief has the burden of alleging and proving irreparable harm and lack of an adequate remedy at law." *Commissioner of Correction v. Coleman*, 303 Conn. 800, 810, 38 A.3d 84 (2012). Before a permanent injunction can issue it must be decided upon facts proved at trial. *H.O. Canfield Co. v. United Construction Workers*, 134 Conn. 623, 626, 60 A.2d 176 (1948). Success on the merits requires the party seeking permanent injunctive relief to demonstrate actual success on the merits rather than likelihood of

success, as is required when a preliminary injunction is requested. *Amoco Production Co. v. Gambell*, 480 U.S. 531, 546 n. 12, 107 S. Ct. 1396, 94 L. Ed. 2d 542 (1987). "Adequate remedy at law means a remedy vested in the complainant, to which he may, at all times, resort, at his own option, fully and freely, without led or hindrance. . . . If the plaintiffs have an adequate remedy at law then they are not entitled to the injunction." (Citations omitted; internal quotation marks omitted.) *Stocker v. Waterbury*, 154 Conn. 446, 449, 226 A.2d 514 (1967). "Irreparable injury justifying an injunction is that which cannot be adequately compensated in damages or for which damages cannot be compensable in money." (Internal quotation marks omitted.) Black's Law Dictionary (9th Ed. 2009). "Where an injury is of such a nature that it cannot be adequately compensated in damages, or cannot be measured by any pecuniary standard, it is irreparable." *Connecticut Association of Clinical Labs. v. Connecticut Blue Cross, Inc.*, 31 Conn. Supp. 110, 113–14, 324 A.2d 288 (1973). "A prayer for injunctive relief is addressed to the sound discretion of the court . . . [and] [h]ow a court balances the equities is discretionary." (Internal quotation marks omitted.) *Feehan v. Marcone*, 331 Conn. 436, 490-91, 204 A.3d 666 (2019). "A decision to grant or deny an injunction must be compatible with the equities in the case, which should take into account the gravity and willfulness of the violation, as well as the potential harm to the defendant." *Bauer v. Waste Management of Connecticut, Inc.*, 239 Conn. 515, 527, 686 A.2d 481 (1996).

A determination of whether the plaintiffs have demonstrated actual success on the merits requires an analysis of the act. "The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case, including the question of whether the language does so apply. When construing a statute, our fundamental objective is to ascertain and give effect to the apparent intent of the legislature. In other words, we seek to

determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of the case, including the question of whether the language actually does apply. In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extra textual evidence of the meaning of the statute shall not be considered." *Jobe v. Commissioner of Correction*, 334 Conn. 636, 647–48, 224 A.3d 147 (2020).

The purpose of the act informs its interpretation. "Soon after the formation of political parties in this country, the maxim '[t]o the victor belong the spoils' became current and its wide application gave birth to the so-called 'spoils system.' This in turn resulted in political scandals which have rocked the nation to its foundation. In an attempt to remedy this condition, various forms of merit systems have been adopted aimed to obtain qualified appointees and to ensure them a tenure of office free from interference on political or religious grounds." *State ex rel. McNamara v. Civil Service Commission,* 128 Conn. 585, 588, 24 A.2d 846 (1942). "[T]he State Personnel Act[2] [§ 5-193, et seq.] . . .established a civil service system based upon principles of merit. . .[It]was designed to eliminate, as far as practicable, the 'spoils' system of making appointments based upon political affiliations, and to prevent discrimination in appointments and dismissals based upon considerations other than fitness to perform a job." (Citations omitted, internal quotation marks omitted) *Engle v. Personal Appeal Board*, 175 Conn. 127, 131, 394 A.2d 731 (1978). Our Supreme Court has "emphasized the importance of maintaining the integrity of [the civil service] system. Statutory provisions regulating appointments under civil service acts are mandatory and must be complied with strictly. . . Compliance by a civil service

[2] The act was enacted in 1967. See 1967, P.A. 657, § 2, eff. June 30, 1967.

commission that is tantamount to substantial compliance is not sufficient where the civil service provision is mandatory, as substantial performance has no application to the performance of duty by those entrusted with the administration of the civil service law. It would open the door to abuses which the law was designed to suppress." *Fitzgerald v. City of Bridgeport*, 187 Conn. App. 301, 323–24, 202 A.3d 385 (2019).

Turning to the act itself, General Statutes § 5-195 prescribes the merit principle as the framework for state employment hiring and promotion. It provides that "[t]he system of personnel administration for employees in the state service shall be based on merit principles. All appointments and promotions. . .shall be made according to merit and fitness as ascertained by examinations given in accordance with provisions of this chapter." Stated differently, § 5-195 requires the employment of examinations, which conform to statutory specifications, to determine the merit and fitness of candidates. The commissioner of the DAS is required to "administer . . .selection programs that will identify those applicants *most qualified* for appointment to or promotion in the state classified service, and establish candidate. . .lists for" the various positions. (Emphasis added) General Statutes § 5-200(a). The phrase "candidate list" is defined as "a list of the names of persons based on merit as determined under the provisions of this chapter, which persons have been found qualified through suitable examinations for employment." General Statutes § 5-196(4). Moreover, the "candidate list" certified by the commissioner "shall contain the final earned rating of each candidate. The appointment authority shall fill the vacant position by selecting any candidate on the candidate list." General Statutes § 5-215a.

The word "examination" is defined as "an assessment device or technique yielding scores or ratings designed to determine the fitness of candidates for positions allocated to a specified

class, occupational group or career progression level." General Statutes § 5-196 (11). General Statutes § 5-219 (a) mandates that examinations "shall be competitive" and provides further, inter alia, that they "may take the form of written or oral tests, demonstration of skill or physical ability, experience and training evaluation, or in the case of promotional examinations, evaluation of prior performance, or any other assessment device or technique deemed appropriate to measure the knowledge, skills or abilities required to successfully perform the duties of the job."

In short, the act prescribes the use of competitive examinations yielding scores or ratings that identify those candidates that are most qualified for hiring or promotion. The commissioner shall then create a "candidate list" from which the agency may, in its discretion, hire or promote.

Greater detail of the component parts of the process in the present case that led to the selection of twenty-seven candidates for promotion to sergeant is necessary resolution of this decision. Accordingly, the court makes the following additional findings of fact. The combined application/examination package requested the applicant's name and identifying information, inquired whether they were a current employee, whether they were lawfully permitted to work in the United States, whether there were geographical limitations on where the applicant would be able to work in the State of Connecticut, asked the applicant's availability for full time work and his or her shift availability. It also required a resume as well as a description of the applicant's educational history and work experience. Thereafter, three supplemental questions inquired whether the applicant possessed at least four years of experience as a Connecticut State Police Trooper above the level of trainee, if they possessed and had the ability to retain a driver's license and whether the applicant had permanent State of CT status within the DESPP. Finally, the examination portion contained a second questionnaire of six questions inquiring of the

applicant's highest level of education, military experience, length of employment with the CSP, assignments to any specialized bureau or units within the CSP, prior non-CSP law enforcement experience and whether the candidate possessed any professional licenses to include electrician and hairdresser licenses. This mode of examination, conducted by DAS, is referred to as an experience and training examination.

This application/examination package was designed to only *minimally qualify* applicants. There was no scoring of any kind, candidates simply passed or failed. As a result of that examination, DAS sent a list of minimally qualified candidates to the CSP. The view of DAS, as expressed by Nicholas Hermes, Deputy Commissioner of the DAS, and Matthew Cronin, an HR Consultant III with the DAS Statewide Human Resources Management Division, and further as communicated to Col. Mellekas, was that the list generated of the applicants who passed the application/examination test was the certified "candidate list" required by statute, from which the CSP could select any name for promotion. Col. Mellekas was afforded almost unfettered discretion as to whom he chose for promotion with the only restriction being that he could not discriminate. The guidance provided by DAS was that after receipt of the certified "candidate list" Col. Mellekas could pick whoever he liked from the list based on what's best for the agency or *how he saw fit to do so*. Indeed, Col. Mellekas was led to understand by EEOC that he could pick candidates for promotion from the candidate list in alphabetical order if he so chose although it was not recommended. There were 297 candidates on the candidate list certified by DAS.

Despite the vast discretion DAS interpreted the act to provide the CSP after its receipt of the certified "candidate list," the latter engaged in a further selection process involving the two Referral Questions, the oral interview and the provision of a professional profile. DAS did not

actively participate in this subsequent process. The referral questions were considered merely as a tool for the CSP to further gain information on an individual's experience, training, education so as to use that information to further "whittle down" the list to ultimately reach a hiring decision. Cronin testified, and this court so finds, that the referral questions and the oral interview were not considered by DAS as part of an examination that resulted in the "candidate list."

Candidates who passed the application/examination test were invited to take RQ1 which contained six questions. In this test, a candidate was queried about their level of education, military status and experience, years with the CSP, assignment to a specialized unit, experience in non-CSP law enforcement and possession of any professional licenses. The last question specifically referenced hairdressing and electrical licenses. Answers were weighted in relation to a candidate's specific education, experience and training. For example, points from zero to fifteen were assigned according to either a highest education attainment of high school or a master's degree or greater and points from zero to fifteen were assigned to law enforcement experience from a non-CSP jurisdiction depending on the number of years completed. Points were assigned to each answer and a cutoff score of seventeen was established. The scoring ranged from seventeen points to fifty-five points. Those candidates whose responses yielded a score equal to or in greater than the cut off score were invited to take RQ2. The score derived from RQ1 was not, however, combined with further scoring nor did it play any role in further selection of the candidates.

RQ2 was comprised of three questions that queried a candidate's administrative, investigatory and specialized training skills or experience. Candidates were not scored blind because the examiners, consisting of Col. Mellekas and three lieutenant colonels, were shown the

name of each candidate when they evaluated the candidate's responses. The evaluations were done collectively rather than individually. Points were assigned to each answer with a combined maximum score of fifteen. A cut off score of nine was applied with those candidates receiving a nine or more advancing to the oral interview. Before the scores were finalized, the examiners re-evaluated each candidate who received an eight for the purpose of reassessing their scores. Some candidates who initially received an eight were given a higher score so they could advance to the next stage. No record exists of the identity of those candidates whose scores were increased in this manner or why their scores were increased. One candidate whose point total was a nine was ultimately selected for promotion, placing the candidate in the bottom third of those candidates who passed RQ2. As with the scores from RQ1, the point scores from RQ2 were not considered at subsequent stages of the selection process. It follows that the process following RQ2 did not involve a cumulative score that was added to a candidate's RQ1 score and/or a weighted average of a candidate's scores throughout the testing process.

The candidates passing the RQ2 test were invited to participate in an oral interview. During the substantive portion of the oral interview, the candidates were presented with three scenarios and were given two minutes to respond to each. The responses were scored by Col Mellekas and two Lieutenant Colonels of the CSP (examiners) immediately following the interview and before the next candidate was interviewed. No numerical scores or points were used to assess the candidates on their performance. Col. Mellekas has been informed by DAS that if the selection process was not governed by numerical ratings and scores he would have much more discretion and subjective authority to pick candidates for promotion.

There was no written scoring or predetermined standards or values utilized or followed by the examiners. While Col. Mellekas and the two others took notes, none were preserved as all

were destroyed. The interviews were conducted between December 2, 2019 and December 6, 2019. Prior to the interviews, three categories had been created for candidate ranking: "highly recommended," "recommended" and "do not recommend." The examiners deviated from this plan during the interviews by placing the candidates in categories of the "high end of high" or "the low end of high," the "high end of recommend" or the "low end of recommend" in addition to "do not recommend." There is no extant document that reflects these initial ratings. The comments of the examiners were recorded by Alicia Hall, Co. Mellekas' assistant, who transposed the comments on to an Applicant Flow Chart that contained, relevantly the candidates name, race/gender, recommendation for hire and substantive comments about the candidate. By the time the decision on which candidates were to be promoted was made the categories into which they were placed had evolved to "very highly recommended," "highly recommended," "recommended" and "not recommended." Twenty-seven candidates, matching exactly the number of available openings for promotion, were evaluated as "very highly recommended." These candidates were selected for promotion.

The criteria against which the candidates were assessed in their interviews was not reduced to writing. In addition to evaluating the candidates on their responses to the three scenarios, Col Mellekas evaluated them on whether they presented properly, their appearance, whether they exhibited a calm and professional demeanor and whether they spoke with a reasonable tone of voice. The evaluation of the candidates' responses to the three scenarios was not tied to a checklist of specific content and was seen as open ended. In some cases, the manner in which the candidates delivered the responses was considered more important than the actual content of the answer. The court makes a finding of fact, consistent with the testimony of Col.

Mellekas, that the evaluation of the oral interviews involved a subjective evaluation of the substantive content of the responses and the manner in which the candidates presented.

The examiners also considered the candidates' professional profile in their selection and ranking. Again, the criteria with which the professional profiles was not reduced to writing and appears to have been left to the discretion of the examiners. Some of the information derived from the profiles were included in the comments section of the Applicant Flow Chart although no uniform and consistent standard for determining what information would be included was applied. The purpose of the comment section was to express accurate information about the candidate's performance during the interview process as well as other attributes such as their experience. An initial version of the Applicant Flow Chart, prepared by Ms. Hall, reflected the comments that she was directed to include by the examiners. After the initial Applicant Flow Chart was created, Ms. Hall forwarded copies to Nagina McMillian, an Equal Opportunity Director for the DESPP and Daphne Lewis, an Equal Opportunity Specialist for DESPP. Ms. McMillan then suggested changes to the Applicant Flow Chart. The comments included the suggestion that information be added to the comments about certain candidates so that they could be differentiated from others who were ranked either above them or below them. For example, she suggested adding information to two candidates, ranked as Recommended, whose comments did not seem different than those for candidates ranked Highly Recommended. Ms. McMillan observed that the comments for one candidate - who was ultimately ranked as Very Highly Recommended, and thus selected for promotion – referred to the candidate having given some misinformation during the interview. She suggested that this should be removed from the final flow chart because "one may question how he is rated Very Highly Recommended if he provided some misinformation." In fact, the comment section, which originally contained individual

comments as to that candidate's answers to all three scenarios, reflected that the candidate had provided some misinformation as to the third scenario. As a consequence, the Applicant Flow Chart was changed such that the final version of the comments for this candidate deleted the reference to "some misinformation" and the comment "inclusive content and rationale and logical approach to all scenarios" was substituted. Moreover, a positive observation, not previously present, about the candidate's experience was also added. Two other candidates who were rated as Very Highly Recommended had no negative observations listed in the final applicable comment section although their actual responses to the scenarios had some deficiency.

Col. Mellekas was unable to explain why these changes and others were made. His biggest concern was the order of the rankings for the candidates, not the documented evaluations of them as expressed in the comment section of the Applicant Flow ChartCol Mellekas operated on the belief - instilled in him by EEOC - that he could pick however he liked, at his discretion, from the certified list.

The principles underlying civil service examination laws such as the act bear emphasis. These are created to provide "for a complete system of procedure designed to secure appointment to public positions of those *whose merit and fitness has been determined by examination*, and to eliminate as far as practicable the element of partisanship and personal favoritism in making appointments.... A civil service statute is mandatory as to every requirement." (Emphasis added) *Fitzgerald v. City of Bridgeport*, supra, 187 Conn. App. 323. The certified candidate list of 297 candidates provided by DAS to the CPS did not conform to the mandate of § 5-200 requiring it to "identify those applicants *most qualified* for. . . promotion." (Emphasis added) By DAS' own admission, the certified candidate list of 297 applicants reflected only those applicants that were *minimally qualified*. The court finds that Col.

Mellekas conducted further examinations to "whittle down" the list because in good faith he recognized the inadequacy of the 297 applicant certified candidate list.[3]

Such a broad pool of candidates from which an agency can select a candidate or candidates without fetter other than goodwill, as understood only by the agency, is antithetical to the principles of civil service examinations. In *Kelly v. City of New Haven*, 275 Conn. 580, 881 A.2d 978 (2005), our Supreme Court had the occasion to comment on promotional methodologies that broaden an agency's promotional discretion. Civil service processes are "designed to eliminate as far as practicable the element of partisanship and personal favoritism in making appointments." Id., 615. Thus, a public agency's "discretion in making such promotional decisions must be limited. Id. Methodologies that "result in "broad discretion to choose among a large poos of candidates for each vacancy" run counter to civil serve rules that are designed to allow an agency "limited discretion in the selection of candidates." Id., 619. The court emphasized that it would not endorse a methodology "which circumvents the letter and undermines the spirit of . . . civil service provisions by allowing consideration of large groups of candidates for a single vacancy." Id., 623.

The methodology resulting leading to the candidate list created after the application package circumvented the letter and undermined the spirit of the act because it vested virtually limitless discretion in Col. Mellekas, the promotional authority, to effect the promotions. The court holds that the present examination process that resulted in a large pool of only *minimally qualified* candidates violated § 5-200(a) which requires candidate list of those applicants "most qualified" for promotion. Furthermore, a list of 297 applicants circumscribed in no meaningful

[3] "Good faith of the parties will not validate an illegal appointment and will not be sanctioned by the courts." *Resnick* v. *Civil Service Commission*, 156 Conn. 28, 32, 238 A.2d 391 (1968).

way the discretion of the promotional authority, here Col. Mellekas, to promote based on favoritism, patronage, political or religious favoritism.[4] As such it constitutes a violation of the act.

Moreover, the manner in which RQ1 and RQ2 examinations were conducted in the present case, as well as the oral examinations and the examiners' use of the professional profiles, were also in violation of the act. It is unquestionable that RQ1, RQ2 and the oral interviews were examinations within the contemplation of the act. Each possessed the character of an "assessment device or technique yielding scores or ratings designed to determine the fitness of candidates for positions" as the word examination is defined by the act. See § 5-196 (11). To the extent that any examination is undertaken it must comply with the provisions of the act. In this regard, the act requires that any examination employed, at any stage, must be "given in accordance with provisions of this chapter." § 5-195. While the RQ1 and RQ2 tests could have contributed to a composite score representing the candidates' final earned rating, the only results considered by the CPS was whether the candidates pass or failed the exam Section § 5-215a provides that the candidate list "shall contain the final earned rating of each candidate." General Statutes § 5-223 requires that "[t]he final earned rating of each person who competes in and passes each phase of any examination shall be determined by the weighted average of the earned ratings on all phases of the examination, according to weights for each phase established by the Commissioner of Administrative Services in advance of the giving of the examination and published as a part of the announcement of the examination." The absence of scores or ranking contributing to a final earned rating violated the act.

[4] The court specifically makes no finding that Col. Mellekas' final selections were improperly motivated.

Lastly, the oral interview was conducted in a manner that violated the act. Section 5-219 requires examinations to be competitive. "A test or examination, to be competitive, *must employ an objective standard or measure*. Where the standard or measure is wholly subjective to the examiners it differs in effect in no respect from an uncontrolled opinion of the examiners and cannot be termed competitive. An examination cannot be classed as competitive unless it conforms to measures or standards which are sufficiently objective to be capable of being challenged and reviewed, when necessary, by other examiners of equal ability and experience." *Ziomek v. Bartimole*, 156 Conn. 604, 611, 244 A.2d 380 (1968). It follows that competitive examinations must yield results susceptible to objective verification by disinterested examiners. The manner in which the present oral interviews were conducted made this impossible. The lack of objective standards or criteria for evaluation of the interviews, which resulted in the exercise of subjective evaluations of the candidates' answers, renders the oral interviews non-competitive and accordingly in violation of the act. Indeed, the court makes the further finding of fact that the lack of documented objective standard based evaluations makes it impossible to ultimately distinguish between any of the candidates who were admitted into the oral interview phase. For the foregoing reasons, the court holds that the plaintiffs have established actual success of their claims on the merits.

The defendants assert that even if actual success on the merits is demonstrated, the plaintiffs are unable to prove irreparable harm, a lack of an adequate remedy at law or that the balance of the equities favors the granting of equitable relief. The court addresses these in turn. A party seeking injunctive relief must establish that no adequate legal remedy exists and the existence of irreparable harm. See *Commissioner of Correction v. Coleman*, supra, 303 Conn. 810. Both are easily met. Access to remedies at law, such as a declaratory judgment or a suit for

money damages, would require the plaintiffs' to establish that but for the defendants improper promotional methodology, they would have been selected for promotion. The lack of objective, verifiable testing for the oral interviews renders such proof impossible. Moreover, as noted by the Superior Court in a decision granting an injunction preventing illegal promotions in the New Haven Police Department, "[t]he prospective loss of not fairly being considered for promotion cannot be compensated for in money terms." *Kelly v. City of New Haven*, Superior Court, judicial district of New Haven, Docket No. CV000444614, 2002 WL 1518274, (Munro, J. June 11, 2002). As in *Kelly*, absent the injunction, the present defendants will proceed with their plans to promote the twenty-seven candidates. Finally, the court finds that the plaintiffs will be deprived of the opportunity of seeking promotion they may otherwise have been entitled to as long as the defendant's list of candidates remains in effect. See *New Haven Firebird Society v. Board of Fire Commissioners of City of New Haven*, 32 Conn. App. 585, 594, 630 A.2d 131 (1993)(affirming finding of no adequate remedy at law and existence of irreparable harm because plaintiffs, firefighters challenging illegal promotional practices, "were deprived of the opportunity of seeking promotion as long as the illegal [promotional lists] remained in effect.") Id., 594.

The court is also not persuaded that the equities favor the defendants, who argue that a shortage of sergeants, significant expenditures for overtime payments to current sergeants and principles of hiring efficiency outweigh any equities that might favor the plaintiffs. Issues of convenience and need for expeditious promotions have not persuaded the courts as equitable considerations sufficient to overcome the violation of the civil service laws. See *New Haven Firebird Society v. Board of Fire Commissioners of City of New Haven*, supra, 32 Conn. App. 591 (rejecting factor of unnecessary financial burden because the courts "have long

recognized the purpose and importance of [civil service] examinations.") "Any violation of the law enacted for preserving this system [of civil service laws] . . . is fatal because it weakens the system of competitive selection which is the basis of civil service legislation. Strict compliance is necessarily required to uphold the sanctity of the merit system. It is strict, not technical, compliance that is required." *Kelly v. City of New Haven*, supra, 275 Conn. 617. The court therefore holds that a balancing of the equities favors the plaintiffs.

For the foregoing reasons:

1. a declaratory judgment issues that the present promotional process for promotion to Sergeant conducted by the defendants violates the State Personnel Act, General Statutes § 5-193 et seq., and

2. A permanent injunction enters
   a. voiding any promotion that may occur or has occurred based on the promotional process before the court,
   b. ordering the defendants to cease and desist from continuing the present promotional process for promotion to sergeant, and
   c. ordering the defendants to adopt an objective, competitive based system for promotions.

THE COURT

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Cesar A. Noble
Judge, Superior Court